U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090

U.S. Citizenship and Immigration Services

(b)(6)

DATE: FEB 10 2015 OFFICE: NEBRASKA SERVICE CENTER FILE:

IN RE: Petitioner:
Beneficiary:

PETITION: Immigrant Petition for Alien Worker as a Member of the Professions Holding an Advanced Degree or an Alien of Exceptional Ability Pursuant to Section 203(b)(2) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(2)

ON BEHALF OF PETITIONER:

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office (AAO) in your case.

This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions. If you believe the AAO incorrectly applied current law or policy to your case or if you seek to present new facts for consideration, you may file a motion to reconsider or a motion to reopen, respectively. Any motion must be filed on a Notice of Appeal or Motion (Form I-290B) within 33 days of the date of this decision. **Please review the Form I-290B instructions at http://www.uscis.gov/forms for the latest information on fee, filing location, and other requirements.** *See also* 8 C.F.R. § 103.5. **Do not file a motion directly with the AAO.**

Thank you,

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The preference visa petition was denied by the Director, Nebraska Service Center. The subsequent appeal was dismissed by the Administrative Appeals Office (AAO). The matter is now before the AAO on a motion to reopen and reconsider. The motions will be dismissed, the previous decision of the AAO will be affirmed, and the petition will be denied as moot.

The petitioner describes itself as a home side dredging company. It seeks to permanently employ the beneficiary in the United States as a financial director. The petitioner requests classification of the beneficiary as an advanced degree professional pursuant to section 203(b)(2) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(2).[1] The petition is accompanied by a labor certification approved by the U.S. Department of Labor.

The director's decision denying the petition concludes that the petitioner did not establish its ability to pay the proffered from the priority date of the certified labor application onwards. Our June 14, 2013 decision affirmed the director's decision and dismissed the appeal.

On July 16, 2013 the petitioner filed a motion to reopen and reconsider our decision dismissing the appeal. On August 26, 2013 we sent the petitioner a Notice of Intent to Dismiss (NOID) the appeal. In the NOID we sought information demonstrating that the petitioner was still in business and operated in the state of Florida. On November 22, 2013 we sent the petitioner a second NOID and request for evidence, noting that the petitioner's operating status was an ongoing concern in Florida, and requesting that the petitioner demonstrate the *bona fides* of the job offer and its ability to pay the proffered wage. The petitioner's response to both NOIDs was received and is included in the record.

On November 4, 2014, we sent the petitioner a notice of derogatory information (NDI) and intent to dismiss (NOID) with a copy to counsel of record. The NDI/NOID informed the petitioner of the following derogatory information:

> On August 19, 2014, we confirmed with the Florida Department of State – Division of Corporation (DOC) website (that your company voluntarily dissolved on August 2, 2013. Additionally, on August 6, 2014, USCIS spoke with a regulatory specialist for the DOC who confirmed that your company was dissolved and has not filed an annual report since 2011. Moreover, your company submitted a letter purported to have been drafted by , EDP from the DOC, dated August 29, 2013. The letter from Mr. claims that your company is still active and fully functional. On August 7, 2014, USCIS shared this letter with the DOC. The DOC confirmed that they did not issue the letter; that the DOC does not recognize the author of the letter; and he is not in the agency's directory. The record now contains another letter claiming to have been drafted by , dated January 2, 2014. Your company offered Mr. s letter as a sealed, unaddressed letter with an illegible washed out stamp. We attempted to reach out telephonically to the author of the letter on September 30, 2014 and found that no such person listed on

[1] Section 203(b)(2) of the Act provides immigrant classification to members of the professions holding advanced degrees, whose services are sought by an employer in the United States.

> the letter is working for the DOC. In fact, we were directed to someone with the same name who works in the Department of . Further, the phone number provided is a general information line for the state of Florida without a specific extension. Additionally, the letter appears to be a distorted photocopy of a possible Florida Department of State letterhead. Upon examination of the letter, it would appear that your company is providing fraudulent letters in order to assert that your company is still legally conducting business within the state of Florida. Thus, we intend to find that you have attempted to willfully misrepresent the status of your company before us in these proceedings...
>
> In the instant case, you appear to have made a material misrepresentation in submitting false DOC letters of your company's active status. If the true status of your company had been confirmed as inactive, the motions and the appeal would have been moot based on the dissolution of the petitioner and the petition would remain denied. 8 C.F.R § 205.1(a)(iii)(D).
>
> Further, in your response to our November 22, 2013 Request for Evidence you submitted letters from Florida purportedly documenting your company's contract with the county for the in 2012 and 2013. A search of the Florida Website) reveals that the project began in 2011 and was awarded to on January 10, 2012)(accessed October 20, 2014). This casts doubt on the validity of the letters from and this inconsistency must be resolved. *See Matter of Ho*, 19 I&N Dec. 582, 591-592 (BIA 1988). Please submit independent, objective evidence to demonstrate the validity of the letter from and your company's work on the from 2012 through 2014, as claimed in your January 8, 2014 letter.

The NDI allowed the petitioner 30 days in which to submit a response. We informed the petitioner that failure to respond to the NDI would result in a dismissal of the motion.

As of the date of this decision, the petitioner has not responded to our NDI/ NOID. The failure to submit requested evidence that precludes a material line of inquiry shall be grounds for denying the petition. *See* 8 C.F.R. § 103.2(b)(14). Since the petitioner failed to respond to the NDI/ NOID, the motions will be summarily dismissed as abandoned pursuant to 8 C.F.R. § 103.2(b)(13)(i).

We find that the petitioner willfully misrepresented itself as an on ongoing business in the commercial dredging industry in Florida. The term "willfully" in the statute has been interpreted to mean "knowingly and intentionally," as distinguished from accidentally, inadvertently, or in an honest belief that the facts are otherwise. *See Matter of Healy and Goodchild*, 17 I&N Dec. 22, 28 (BIA 1979) ("knowledge of the falsity of a representation" is sufficient); *Forbes v. INS*, 48 F.3d 439, 442 (9th Cir. 1995) (interpreting "willfully" to mean "deliberate and voluntary").

Materiality is determined based on the substantive law under which the purported misrepresentation is made. *See Matter of Belmares-Carrillo*, 13 I&N Dec. 195 (BIA 1969); *see also Matter of Healy and Goodchild* 17 I&N Dec. 28. As is set forth above, a material issue in this case is whether or not the petitioner continues to operate in a valid status so that a bona fide job offer remains.

A misrepresentation is material where the application involving the misrepresentation should be denied on the true facts, or where the misrepresentation tends to shut off a line of inquiry which is relevant to the applicant's eligibility and which might well have resulted in a proper determination that the application be denied. *See Matter of S- and B-C-*, 9 I&N Dec. 436, 447 (AG 1961).

In the instant case, the petitioner sought to procure a benefit provided under the Act through a willful misrepresentation of a material fact.

The petitioner failed to respond to the NDI/NOID. The failure to submit requested evidence that precludes a material line of inquiry shall be grounds for denying the petition. *See* 8 C.F.R. § 103.2(b)(14). We therefore make a finding of fraud against the petitoner. This finding of fraud shall be considered in any future proceeding where admissibility is an issue.

In visa petition proceedings, it is the petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013). Here, that burden has not been met.

ORDER: The motions are dismissed. The appeal is dismissed with a finding that the petitioner willfully misrepresented a material fact.